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Floyd Abrams

The Lawyer With Press Appeal

By Esther Davidowitz and Mitchell Stephens

Abrams was appalled recently when the CIA decided to take a complaint against ABC News to the Federal Communications Commission. The CIA was

furiously about an allegation, later essentially withdrawn in a "clarification," on ABC's "World News Tonight" that the agency had been involved in a murder plot. FCC officials say they cannot recall another instance in which a branch of the federal government has filed a complaint with the FCC to threaten the way it has been covered. "This is the closest the federal government has come since the Alien and Sedition Acts of 1798 to seeking to use law to punish the press for criticizing the government," Abrams says. "If successful, it would challenge the very system of government under which we live."

Abrams believes the press has been too self-involved to speak out against the broad threat to civil liberties he sees the Reagan administration posing. "I don't think you can focus only on the First Amendment," he says. "How can you persuade people that you really care about

issues of civil liberties if the only one you protest about is one affecting your own self-interest?" Yet, Abrams also believes the press has been too self-conscious to stand up repeatedly and forcefully when its own rights are on the line. He notes that by protesting their treatment during the invasion of Grenada, journalists succeeded, after the fact, in changing the administration's policy: "I think if we invade Nicaragua, the press will be there... if that makes anybody feel good. It's important for the press to speak out when it believes its rights have been infringed upon, even at some risk of angering the public or leading people to think that the press wears a perpetual pout."

The press has appeared most on the defensive lately when facing libel suits. In the opinion of Herbert Schertz of Mobil, this is because people have difficulty accepting the position, adopted by

the Supreme Court in 1964, that, even if public officials can prove that a defamatory charge was false, they must also prove that it was made with "actual malice" to win a libel action. Abrams acknowledges that this position is "counter-intuitive." "The law asks juries to do things which they seem all but totally unable to do," he says. But, although more than 80 percent of jury decisions in libel cases have gone against the press in recent years, Abrams is quick to note that 75 percent of those jury decisions are eventually overturned on appeal and that 75 percent of all libel cases are thrown out of court before they ever reach a jury.

Abrams was cheered by the jury's decision in the Ariel Sharon-*Time* magazine libel case. "There, with an extraordinary judge and a particularly dedicated jury, the system worked, since the jury was able

to distinguish between what it viewed as *Time's* carelessness and what it did not view as *Time's* knowing misbehavior," he says. "The decision gives me some hope that in the future juries will be better able to follow the law and to avoid the absurd situation of having three out of four decisions reversed," he says.

Abrams is less concerned with what is happening in jury rooms than with the psychological effect of current cases on newsrooms. He fears that cases such as the Westmoreland-CBS libel trial, despite General Westmoreland's decision to drop the case, will encourage other high-ranking public officials to file libel suits in the future and, therefore, may discourage reporters and editors from chasing down controversial stories about these officials. "It could lead to broadcast and print journalists letting up some because of concern about lawsuits—even though

CBS has effectively won," Abrams says.

The press in America today can be criticized as too frivolous or arrogant, too fat or self-satisfied. But, for Floyd Abrams, the news media—from the *Nation* to the *New York Post* (at last report he was reading the *Post* again)—are, at their best, fulfilling a great constitutional role: "exposing governmental misconduct... I am concerned that the Westmoreland case and other recent thrusts against the press could too easily lead to a diminution of effort on the part of the press in that direction," he says.

What if the press were to ease up on those in power? What if security-conscious officials were to close down the press' sources of information? What if we were no longer able to hear the other side of the argument? "The public," he warns, "will never know if the press stops covering stories it should be covering."

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